ARKANSAS COURT OF APPEALS
NOT DESIGNED FOR PUBLICATION
SARAH HEFFLEY, JUDGE

DIVISION I

CA CR 06-490

MORAN RAYMOND ELLIS

February 7, 2007

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY
[NO. CR 05-500]

V.

STATE OF ARKANSAS

HONORABLE WILLARD PROCTOR, JR., JUDGE

APPELLEE

AFFIRMED

Sarah J. Heffley, Judge

The appellant in this criminal case, Moran Raymond Ellis, was found guilty of possessing cocaine with intent to deliver by the trial court sitting as the trier of fact, for which he was sentenced to a term of fifteen years in prison. His only argument for reversal is that the evidence is not sufficient to support the conviction. We affirm.

Arkansas Code Annotated section 5-64-401(a) (Repl. 2005) provides that it is unlawful for any person to possess a controlled substance with intent to deliver. There is a rebuttable presumption that a person who possesses over one gram of cocaine possesses that substance

with the intent to deliver. Ark. Code Ann. § 5-65-401(d)(1) & (3)(A)(I).

The testimony at trial revealed that officers with the Little Rock Police Department had obtained felony warrants for appellant's arrest, and they received information that he could be located in unit 65 at the Silver City Court Apartments in North Little Rock. They went there to serve the warrants at around 8:00 a.m. on December 10, 2004. Devalon Thomas, a woman who lived in the apartment with her young child, answered the door and advised that appellant was upstairs in the south bedroom. The officers found appellant alone on a mattress and asleep on his back when they entered the bedroom and announced that they were the police and that he was under arrest. Two officers testified that, immediately upon awakening, appellant rolled over and grabbed with his right hand a black, furry purse that was sitting on the bed. Another officer said that appellant reached for, but did not take hold of, the purse. The purse was secured, and inside there were four plastic baggies; each of them contained a rock of cocaine. All told, the rocks of cocaine weighed 11.2247 grams.

The purse also contained $568 in cash and identification belonging to a Shaquita Norton. Ms. Thomas told the police that Ms. Norton had been in the apartment earlier that morning.

At the conclusion of the State's case, appellant's counsel moved for dismissal, stating:

> At this time I would make a motion for directed verdict in this case. I don't think the State has made a prima facie case that Mr. Ellis ever possessed or even had the right to possess the purse that was found in that room. He had no identification from him or his identification in there. There was other people in the house. I would move for a directed verdict.

The trial court denied this motion, as well as appellant's renewed motion at the close of the case.

In this appeal, appellant concedes that, when the evidence is viewed in the light most favorable to the State, there is substantial evidence to support the conclusion that he exercised actual care and control over the purse. *See Coggin v. State*, 356 Ark. 424, 156 S.W.3d 712 (2004). However, it is his argument that the State failed to prove that he knew that the purse contained cocaine when he possessed it. This argument is materially different from the one made at trial; therefore, it has not been preserved for appeal.

When a defendant challenges the sufficiency of the evidence, he must apprise the trial court of the specific basis on which the motion is made. *Tester v. State,* 342 Ark. 549, 30 S.W.3d 99 (2000); Ark. R. Crim. P. 33.1(b). The reasoning underlying this rule is that when specific grounds are stated and the absent proof is pinpointed, the trial court can either grant the motion, or if justice requires, allow the State to reopen its case and supply the missing proof. *Tester v. State, supra.* A further reason that the motion must be specific is that we may not decide an issue for the first time on appeal. *Phillips v. State,* 361 Ark. 1, 203 S.W.3d 630 (2005). It is settled law that arguments not raised at trial will not be addressed for the first time on appeal, and parties cannot change the grounds for an objection on appeal, but are bound on appeal by the scope and nature of the objections and arguments presented at trial. *Abshure v. State,* 79 Ark. App. 317, 87 S.W.3d 822 (2002).

In this case, appellant contended below that there was insufficient proof that he

possessed the purse, whereas on appeal he concedes that point and argues instead that there is insufficient evidence that he knew the purse contained cocaine. Appellant has expanded his argument on appeal to include an element of scienter, but we do not reach the merits of this issue and must affirm because it was not presented at trial. *See Phillips v. State, supra; Tester v. State, supra; Abshure v. State, supra.*

Affirmed.

HART and MARSHALL, JJ., agree.